

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 380 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MR.JUSTICE K.A.PUJ

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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GAFAR GANIBHAI MANSURI - Appellant

Versus

STATE OF GUJARAT - Opponent

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Appearance :

MR G RAMAKRISHNAN for Appellant.

MR KT DAVE, APP for Opponent.

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CORAM : HONOURABLE MR.JUSTICE
A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 30/11/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE K.A.PUJ)

1. This appeal is filed by the appellant - original accused through jail who was convicted under Section 20 (b) (ii) read with Section 22 of the Narcotic Drugs & Psychotropic Substance Act, 1985 (hereinafter referred to as "the Act") and ordered to suffer rigorous imprisonment for a period of 10 years and fine of Rs. 1 Lacs and in default thereof, further simple imprisonment of six months. Similarly, the appellant - original accused was also convicted for an offence under Section 22 of the Act and was ordered to undergo R.I. of 10 years and fine of Rs. 1 Lac and in default thereof, to undergo S.I. of three months. Both these sentences were ordered to run concurrently.

2. The case of the prosecution as found from FIR and as revealed during the course of trial is as under :-

3. That the Police Inspector S.H. Zala of A Division, City Police Station, Jamnagar has received an information from the D Staff police constable Lagdhirsinh Chandubha in the form of a written report that a person, namely, Gafar Ganibhai Pinjara, residing in the premises of Satar Daudbhai at Dholia Pir Dargah, Bhaini Vadi, Lalkhan Chuna Bhattha, Jamnagar was illegally bringing psychotropic substance Charas and selling the same in his residential premises. On receipt of the said information, the said Mr. Zala has entered the same in Entry No. 26/1999 at 7.15 O'clock on 18.07.1999 in the station diary and conveyed the said information to the District Police Officer, Jamnagar in writing. Immediately, D staff police constable Harpalsinh Tejendrasing was instructed to call upon two Panchas and accordingly, (1) Rajendra Vallabhdas Tejani and (2) Dilip Bhijibhai Chavda

were called as panch witnesses. Both the panch witnesses were explained about the aforesaid facts and both of them have agreed to go in the raid. The head constable Pravinsinh Bhikhubha, police constable Lagdhirsinh Chandubhai, police constable Harpalsing Tejendrasing, police constable Nikulkumar Mukundrai and police constable Sukhdevsinh Ranjitsinh of the raiding party were also explained the aforesaid facts in presence of both the panchas. A warrant under Section 42 (1) of the NDPS Act for carrying raid at the premises of the aforesaid person, was prepared and the signatures of the panchas were taken. A checking was done on the person of the panchas and the staff of the raiding party mutually and no objectionable substance or psychotropic substance Charas was found. Further, a detailed search and checking was also made in respect of necessary material like seal box, file and the Government vehicle No. GJ 10-G-0226 (T-45) as described in the panchnama and that of the government vehicle driver Manhardan Gadhvi and no objectionable material was found from them. A

detailed panchnama of the first part was prepared between 17.30 to 18.15 hours. An entry No. 27/99 was made at 18.15 hours in the station diary. An entry for proceeding in the raid was made and started with the aforesaid panchas and the police staff with necessary materials like seal, papers etc.

4. Then upon passing through Kalavad Naka, Panch Hatdi, Satvara Vada, Sodhavali, Soni Naka, the government vehicle was stopped in the chowk opposite to Dholia Pir Dargah. The panchas and the persons of the staff raided at 18.30 hours in the premises of above named Gafar Ganibhai Pinjara situated on the east side as described in the panchnama. One person was found to be present therein who was taken by surprise on seeing the police. Upon asking the name and address of the said person in presence of the panchas, he stated his name to be Gafar Ganibhai Khedara, by cast Pinjara, aged 32 years, originally residing at Dhoraji now residing in the premises of Satar Daudbhai near

Dholia Pir Dargah, Lalkhan Chuna Bhattha, Raini Vadi, Jamnagar. P.I. Mr. Zala and other police staff introduced themselves to the said person in presence of the panchas and explained the entire facts. The appellant-accused was also shown the warrant for making search of his person and of the premises by stating that he was the gazetted police officer in presence of the panchas and also asked him as to whether he wanted to get the search carried out in presence of any other gazetted officer or magistrate. The appellant - accused did not want to get the search carried out by any other gazetted officer or magistrate and expressed to be satisfied by the search being carried out by the raiding party. A signature was taken in the warrant in presence of the panchas. The appellant - accused was also explained to check the persons of the panchas and the police staff. He checked the person of all and ascertained that no psychotropic substance or charas or any other objectionable substance was found. The appellant - accused was also asked to ascertain that nothing objectionable or charas was

found from the seal-box, papers and other material etc. Then the person of the accused was checked and five gray coloured pieces in a transparent plastic paper with knot, as described in panchnama, were found from the right side pocket of the pent put on by the accused. The knot of the said paper was opened and the pieces were smelt and wet psychotropic substance charas was confirmed with extreme smell coming out and the currency notes of Rs. 5800/- as mentioned in the panchnama, were also found from the left side pocket of the pent put on by the accused.

5. Thereafter, the raiding party opened a cover of the steel tin lying beside the appellant – accused and six gray coloured pieces packed in a transparent plastic paper were found. Upon opening the said knot of the paper, all the six pieces were smelt and confirmed that extreme smell of psychotropic substance charas was also coming out therefrom. Moreover, two gray-black coloured lumps in a transparent bag were in

the said steel tin and it was smelt and ascertained that it was psychotropic substance charas with extreme smell. So, it was necessary to weigh the aforesaid quantity of charas. Therefore, police constable Lagdhirsinh Chandubha of the raiding party was sent in the government vehicle to bring a weigher with weighing scale. The said police constable brought a person with weighing scale in short time. Upon asking his name and address in presence of the panchas, he stated his name to be Bhupat Odhavji Polara aged 40 years, residing at Vanda Fali, Jamnagar. As the said person was called upon with a weighing scale to weigh the material as mentioned in the panchnama, he was shown aforesaid psychotropic substance charas which was smelt by him. He was asked to weigh the same. At first, he created an atmosphere in the said premises, as per panchnama, to weigh five pieces of charas found during the search from person of the appellant - accused. The five pieces had moist, it was weighed separately and it was total five gram i.e. one gram each as per the panchnama. Thereafter, six moistly

pieces of charas, knotted in a plastic paper from the steel tin, were weighed separately without plastic paper and it was one gram each totaling six gram in weight. Thereafter, two moistly lumps of psychotropic substance charas, found from a bag in the steel tin, were weighed without the bag and it was 51 gram. Therefore, a permit was demanded from the said person for keeping the aforesaid quantity in his custody and the appellant - accused has stated that he was not having any permit. So the five pieces of charas, weighing five grams found while search on the person of him, were kept in a plastic bag with a slip bearing the signatures of the panchas. It was packed with wax solution and the said bag was kept in a cloth bag and stitched. Three seals, as per the panchnama were fixed thereon. It was valued at Rs. 125/- and given mark A. it is seized as a sample for investigation. Similarly, six pieces of charas, weighing six gram knotted in a plastic paper in the steel tin, were placed in a transparent bag and affixed with wax solution, as per the panchnama, and placed with the slip bearing

signature of the panchas in a cloth bag whereon the slip bearing signature of the panchas was also affixed. It was stitched and three wax seals were affixed thereon. It was valued at Rs.150/- and given Mark B and seized as a sample for investigation. The accused was thereafter given seizure memo regarding the entire muddamal articles which were seized and his signature was taken on a copy. Thus the appellant has committed an offence under Section 20 (b) (ii) read with Section 22 & 27 of the Act for keeping in his custody the psychotropic substance called charas valuing about Rs.1550/- without any permit. He was arrested at about 20.30 hours and he was accordingly informed about his arrest in writing under Section 57 of the Act. His signature was obtained on a copy and thereafter complaint was filed against him with Jamnagar City A Division Police Station on 18.07.1999 at about 21.15 hours, being I C.R. No. 717 of 1999.

6. Pursuant to the registration of the offence, the

investigation was put into motion. During the course of investigation, statements of the witnesses were recorded, panchnama of scene of offence was prepared, muddamal articles were recovered by drawing panchnama which were sent to F.S.L. for chemical analysis. After obtaining F.S.L. Report, since sufficient incriminating evidence was found against the accused, he was charge-sheeted in the Court of learned Special Judge, Jamnagar who framed charge against the accused for commission of the offence punishable under Section 20 (b) (ii) read with Section 22 of the Act.

7. The charge was read over and explained to the accused. As the accused has not pleaded guilty to the said charge, he was put to trial and tried by the learned Special Judge, Jamnagar in Sessions Case No. 4 of 1999.

8. To prove the culpability of the accused, prosecution has in all examined as many as 9 witnesses, the

details of which are as under:-

<i>Sr. No.</i>	<i>Particulars</i>	<i>Exh. No.</i>
01.	Deposition of P.W. 1 – Rajendra V. Tejani.	08
02.	Deposition of P.W. 2 – Bhupatbhai Odhavjibhai.	15
03.	Deposition of P.W. 3 – Satarbhai Dawoodbhai.	17
04.	Deposition of P.W. 4 – Nurudin Taherbhai.	18
05.	Deposition of P.W. 5 – Sukhdevsinh H. Zala.	20
06.	Deposition of P.W. 6 – Mohanbhai Ravjibhai.	36
07.	Deposition of P.W. 7 – Jentilal Arjanbhai.	38
08.	Deposition of P.W. 8 – Jitendrabhai Premjibhai.	40
09.	Deposition of P.W. 9 – Ramabhai Kuberbhai.	41

9. Prosecution has also produced several documents and relied upon the contents of the same. Charge is framed at Exh. 3. List of muddamal is at Exh. 6. Panchnama is drawn at Exh. 9. Certificate is issued at Exh. 16. Another panchnama drawn is at Exh. 19. Seizure memo issued at Exh. 23. Station diary is

produced at Exh. 24, 25 & 27. FIR is at Exh. 29. FSL Certificate is issued at Exh. 44. After recording of the evidence of the prosecution witnesses was over, the learned Special Judge, Jamnagar explained the accused the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement, as required under Section 313 of the Code. In his further statement, the accused denied the case of the prosecution by reiterating that he has been falsely implicated. In his defence, the accused has examined Jiluben Mohmmadbhai as D.W. 1 at Exh. 53.

10. On appreciation, evaluation, analysis and close scrutiny of the evidence adduced by the prosecution, the learned Special Judge, Jamnagar has held that the prosecution has established beyond reasonable doubt that the charge levelled against the accused was proved and, therefore, the accused was held guilty of the offence punishable under Section 20 (b) (ii) & Section 22 of the Act. The learned Special

Judge, Jamnagar has, however, heard the accused and his advocate on sentence and looking to the gravity of the offence committed by the accused and looking to the circumstances, the appellant - accused was sentenced to suffer rigorous imprisonment of 10 years and fine of Rs. 1 Lac and in default thereof, to undergo simple imprisonment of six months for the offence punishable under Section 20 (b) (ii) and he was also sentenced to suffer R.I. of 10 years and fine of Rs. 1 Lac and in default thereof, to undergo S.I. of three months for the offence punishable under Section 22 of the Act. Both these sentences were ordered to run concurrently.

11.Mr. G. Ramakrishnan, learned advocate appearing for the appellant - original accused has taken us through the oral as well as documentary evidence which are on record and also assailed the judgment and order of the learned Special Judge, Jamnagar dated 30.03.2000. He has submitted that the learned

Special Judge has erred in convicting the appellant though there was no cogent or adequate evidence showing his guilt in the matter. He has further submitted that the learned Special Judge, Jamnagar has failed to appreciate that the appellant is innocent and has not committed the alleged offence. He has further submitted that the statutory compliance required under the Act have not been fulfilled by the prosecution. The sealing procedure was not properly followed by the raiding party and there were numerous discrepancies and contradictions in the depositions of the panch witnesses as well as police witnesses. There was also very vital difference about sealing muddamal articles in the version of the panch witnesses, police witnesses and F.S.L. Report. He has, therefore, submitted that the appellant-accused could not have been convicted on the basis of F.S.L. Report identifying muddamal as contraband goods.

12.In support of his submission that the sealing

procedure was not properly followed and there were serious lapses, he relied on the decision of this Court in the case of **Navinkumar @ Shambhuprasad @ Bapji Chimanlal Vyas V/s. State of Gujarat, 2006 (1) G.L.H. 409** wherein after considering earlier three decisions of this Court, namely, (1) *Chandrakant Nagindas Modi V/s. State of Gujarat, 1989 (I) FAC 153*, (2) *unreported decision dated 17.08.2001 rendered in Criminal Appeal No. 323 of 1996 filed by Jitendra @ Sanjaykumar Suryakant Desai against State of Gujarat* and (3) *decision dated 07.05.2002 rendered in Criminal Appeal No. 287 of 1999 filed by Ganpatram Punmaram Vishnoi against State of Gujarat*, the Court held that as per the law laid down by this Court, the slips bearing signatures of the panch-witnesses should be affixed on samples and thereafter seals should be applied so that if any attempt is made to tamper with sample, the slips affixed would get torn. On re-appreciation of evidence, the Court was satisfied that correct and fool-proof procedure of sealing was not resorted to

by the Investigating Officer and possibility of tampering with muddamals was not ruled out at all. The Court has evaluated such deficiency in light of other discrepancies brought on record of the case and held that it was difficult to sustain conviction of the appellant – accused. The appeal was accordingly allowed and the appellant – accused was ordered to be released from jail forthwith unless his presence in jail was needed with reference to any other case.

13.Mr. Ramkrishnan has also relied on the judgment of this very Bench delivered in **Criminal Appeal No. 1366 of 1999 with Criminal Appeal No. 34 of 2000 decided on 21.09.2006** wherein all the previous judgments were referred to and relied upon and the appellant – accused was acquitted on the ground that the sealing procedure was not properly followed by the prosecution.

14.Mr. K.T. Dave, learned Additional Public Prosecutor appearing for State of Gujarat, on the other hand,

supported the order and judgment of the learned Special Judge and submitted that there was no violation of any statutory provision and all necessary compliances were made by the raiding parties and/or investigating agency and there was no substance in the argument that the provisions contained in the Act were violated. So far as sealing procedure is concerned, he has submitted that the learned Special Judge has discussed at length this issue in the impugned judgment and order and he has come to the right conclusion that there was no violation of the sealing procedure. He has also considered various authorities cited before him and after considering the same, he has arrived at a conclusion that the sealing procedure was properly followed and the appellant was rightly convicted.

15. We have considered the submissions advanced by learned advocates appearing for the respective parties at length. We have also undertaken a complete and comprehensive exercise of

appreciating all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case. We have also gone through the entire testimonial collections. We have applied our mind to the impugned judgment and order passed by the learned Special Judge, Jamnagar convicting the appellant.

16. Though several contentions were raised before the Trial Court and before this Court, we confine ourselves to deal with the strong protest lodged against sealing procedure adopted by the prosecution. Even otherwise, we are not impressed by the other contentions raised by him. The main grievance was that the identity of the muddamal and the samples sent to the F.S.L. is not established. There was a possibility of tampering with the contents of the samples. The samples were not kept in safe and proper custody and the sealing procedure was absolutely defective. There is difference in the inscription of the seals used for sealing samples and

so misuse of the seal for tampering the contents of the sample cannot be ruled out.

17.To examine and appreciate this contention, relevant provisions in the Act or Rules made thereunder touching this subject matter are required to be looked into. Section 55 of the Act deals with Police to take charge of articles seized and delivered. It provides that Officer in charge of police station shall allow any officer depositing the seized articles to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station. Except this, no provision seems to have been made in the present Act and Rules framed thereunder regarding mode of taking and sealing of the sample, mode of assigning the same to chemical examiner and their chemical examination or even touching the above matters. However, the Central Government issued Standing Instruction / Orders u/S. 55 of the Act. Standing Order No. 1/88 dated

15.03.1988, Standing Order No. 2/88 dated 11.04.1988 and Standing Order No. 1/89 dated 13.06.1989 are required to be looked into. Standing Instruction 1/88 speaks about procedure regarding drawl, storage, testing and disposal of samples from seized narcotic drugs and psychotropic substances. Standing Order No. 2/88 deals with receipt, custody, storage and disposal of seized/confiscated narcotic drugs and psychotropic substances. Standing Order No. 1/89 relates to general procedure for sampling, storage etc. Standing Instruction / Order No. 1/88 inter alia provides as under :-

(i) If the drugs seized are found in packages/containers, the same should be serially numbered for purpose of identification etc.

(ii) Samples must be drawn on the spot of recovery in duplicate, in the presence of search (panch) witnesses and the person from whose possession the drug is recovered.

(iii) The quantity to be drawn in each sample should be 5 gms in respect of all narcotic drugs and psychotropic substances except in the cases of opium, ganja and charas, hashish where a quantity of 24 gms in each case is required. The same quantity should be taken for the duplicate samples also. The seized drugs in the packages/containers should be well mixed to make it homogeneous and

representative before the sample in duplicate is drawn.

(iv) In the case of seizure of a single package/container one sample in duplicate is to be drawn. In case of seizure of more than one packages/container one sample in duplicate from each package/container should be drawn.

(v) All samples must be drawn and sealed in the presence of the accused, panchnama witnesses and seizing officer and all of them shall be required to put their signatures on each sample. The official seal of the seizing officer should also be affixed. If the person from whose possession the drugs have been recovered, wants to put his own seal on the sample, the same may be allowed on both the original and duplicate of each sample.

(vi) The sample in duplicate should be kept in heat sealed plastic bags. The plastic bags should be kept in a paper envelope and properly sealed. Such sealed envelope should be marked as original and duplicate.

(vii) The samples should be dispatched to the respective laboratories under the cover of a Test Memo which shall be prepared in triplicate in proforma NCB-1.

18.Despite the aforesaid Standing Orders /

Instructions, the proper procedures are not being followed by the Investigating Agency and cases have come up before the Court. In the case of

Chandrakant Nagindas Modi V/s. State of

Gujarat, 1989 (I) FAC 153, this Court has taken the view that the muddamal was not properly sealed and there was all possibility of substituting the substance. Coupled with this, the fact that the muddamal remained with the police for more than two months raises a doubt. The prosecution has, therefore, failed to establish the offence beyond reasonable doubt against the appellant. The Court further held that this aspect has escaped the notice of the Learned Trial Judge and in view thereof, the Court allowed the appeal and acquitted the appellants.

19.In **Criminal Appeal No. 323 of 1996, in the case of Jitendra @ Sanjaykumar Suryakant Desai V/s. State of Gujarat** decided on 17.08.2001, the Court has taken the view that the contention regarding laxity in following the procedure relating to sealing of the seized contraband articles has some substance. After considering the evidence of the Investigating Officer and Panch witnesses, the Court

has observed that after drawing the samples, at the time of sealing the samples as well as the remainder of the contraband seized, the slips containing signatures of the Panch witnesses and the Police Officer were placed inside the bags, thereafter the bags were stitched and wax seals were applied. There is no dispute that the Seal remains in custody of the police. The possibility of tampering with the muddamal at a later stage and then again resealing the same by the Investigating Agency cannot be ruled out. The very purpose behind carrying out the search, taking of sample and sealing in presence of Panch witnesses is to ensure that there is no scope for any mischief in procedure required to be followed. At the time of sealing, slips containing signatures of Panch witnesses as well as the Investigating Officer are affixed on the articles seized and a seal is applied over it, so that, in case of any attempt for tampering with the article seized, the seal would be broken or the slip would be torn which would immediately reveal such an attempt. If the slip is put inside as was done in that case, the

possibility of tampering cannot be ruled out. Under the circumstances, the Court held that the procedure followed for sealing in that case cannot be said to be proper and free from any possibility of tampering. The procedure, therefore, cannot be said to be beyond the scope of any reasonable doubt and in that event, benefit must go to the accused.

20. This Court has again considered this issue in **Criminal Appeal No. 287 of 1999 in the case of Ganpatram Punmaram Vishnoi V/s. State of Gujarat** decided on 07.05.2002. Additional Public Prosecutor, as an officer of the Court, has pointed out in the case that no proper sealing has been done by the PSO and, therefore, possibility of tampering with the muddamal cannot be ruled out. The Court took the view in that case that the slip signed by the panchas as well as the PSO, which was kept along with the polyethylene bag is required to be affixed at the outer portion below the wax seal of the police station. If the police keeps the slip signed by the

panchas and the PSO along with the sample muddamal and affix the seal of the police station at the outer portion of the bag, possibility of tampering the muddamal cannot be ruled out as the official seal always remains with the concerned police station. The Court, therefore, held that it is obligatory on the part of the police to see to it that the slip signed by the panchas as well as the concerned Officer is affixed at the outer portion of the sample bag below the official seal of the police station. This procedure will totally rule out the possibility of any tampering with the sample muddamal. This has not been done in that case and hence, the Court held that the procedure adopted by the PSO cannot be said to be free from any doubt and the possibility of the tampering also cannot be ruled out. The Court held that in any case, the benefit must go to the accused.

21.All the aforesaid three judgments have been referred to and relied upon by this Court in its later

decision in the case of Navinkumar @ Shambhuprasad @ Bapji Chimanlal Vyas V/s. State of Gujarat, 2006 (1) G.L.H. 409 and held that the slips bearing signatures of the panch-witnesses should be affixed on samples and thereafter seals should be applied so that if any attempt is made to tamper with sample, the slips affixed would get torn.

22.If we consider the procedure laid down in the aforesaid Standing Instruction / Order as well as the ratio of above referred four different judgments of this Court, in light of the facts found from the deposition of the Panch witnesses, Police witnesses and F.S.L. Report as well as from the documents produced on record, we have no hesitation in coming to the conclusion that in the present case also, proper procedure has not been followed by the prosecution. FIR Exh. 29 refers that five pieces of charas weighing five grams found while search on the person of the accused, were kept in a plastic bag

with a slip bearing the signatures of the panchas. It was packed with wax solution and the said bag was kept in a cloth bag and stitched. Three seals, as per the panchnama were affixed thereon. Same procedure was adopted in respect of six pieces of charas weighing six grams as well as two lumps of charas weighing 51 grams. It indicates that the slips were loosely kept in a plastic bag. The deposition of P.W. 1 - Rajendra V. Tejani who is a panch witness discloses that the contraband article charas were kept in a separate plastic bag and slip was kept in the plastic bag. Slip was duly signed by the panch witnesses as well as by Mr. Zala. The seal was applied after the said slip was kept loosely in the plastic bag. The panchnama also refers to the same thing and indicates that the slip was loosely kept in the plastic bags. Deposition of P.W. 5 - Sukhdevsinh Zala who is P.I. in A division, Jamnagar testifies the fact that the slip was loosely kept in the plastic bag and thereafter the plastic bag was sealed and thereafter it was stitched with cotton threads. In FSL Report Exh. 47, it was clearly stated that three

sealed cloth parcels mark A to C respectively were sealed as Police Inspector, Jamnagar City, A division and they were found intact, correct and as per the seal impression forwarded. It was, however stated that the cloth parcel also contained a paper slip bearing signature of (1) Mr. R.V. Tejani, (2) Mr. Dilip Bhijibhai Chavda in presence of Police Inspector, City A division, Jamnagar. Similarly, cloth parcel 'B' contains six polyethylene packets each having brownish black lumb. The cloth parcel also contain paper slip bearing signature of the above referred persons. Likewise, cloth parcel 'C' contain a polyethylene bag having brownish black lumb said to be charas and the said cloth parcel also contains a paper slip bearing signatures of the above referred persons. Thus, all these three parcels referred to in the FSL report undoubtedly gives an impression that the slip was loosely kept in the plastic bag. This report makes it abundantly clear that the procedure has not been followed by the Investigating Agency. Because of the material contradictions between the depositions of the prosecution witnesses regarding

sealing procedure, this Court is of the view that there was a possibility of tampering with the contents of the sample before they were sent to F.S.L. for analysis. When there is possibility of tampering with the contents of the sample, then no reliance can be placed on the expert opinion and the report of the F.S.L. and it cannot be said that the contraband articles were seized from the possession of the accused and that the sample therefrom was taken and that the sample was sent for analysis and that the report of the expert is regarding the same. When it is so, then the report deserves to be discarded in toto. In light of these discrepancies and infirmities, it is very unsafe to sustain the conviction order. The accused was arrested in July, 1999. More than 7 years are over. It is very unfortunate that the appeal could not be heard earlier. The agony of the accused as well be understood.

23. In peculiar facts of the present case and in light of the decisions referred to herein above and the

principles laid down therein, this Court is of the view that the conviction order passed against the accused cannot be sustained. The Appeal, therefore, succeeds. The order of the learned Special Judge, Jamnagar dated 30.03.2000 passed in Sessions Case No. 4 of 1999 convicting the appellant - accused for offences punishable under Section 20 (b) (ii) & Section 22 of the Act and sentencing him to rigorous imprisonment of 10 years and fine of Rs. 1 Lacs for each of these offences and in default thereof, simple imprisonment for six months and three months respectively, for commission of such offences is hereby quashed and set aside. The appellant - original accused is hereby acquitted from the charges levelled against him. The respondent - State of Gujarat and the jail authority is hereby directed to release the appellant - original accused - Gafar Ganibhai Mansuri from jail forthwith unless his presence is required in connection with any other case. Amount of fine, if paid shall be refunded to him.

24. For the foregoing reasons, this appeal is accordingly allowed.

[A. M. KAPADIA, J.]

[K.A. PUJ, J.]

Savariya